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ADDRESS to the JURY,

December 6, 1784.

In the COURT of COMMON PLEAS,

Geo
By Mr. HARDINGE,

As COUNSEL for Lord CAMELFORD.

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Rec. Oct. 10, 1906

To
Mr. Niccols with Lord Camelford's Compliments

MAY IT PLEASE YOUR LORDSHIP,

AND YOU, GENTLEMEN OF THE JURY,

I AM Counsel for Mr. Jackson, the only Executor of Mr. Wilkinfon; but in *his* name for the parties interested against the demand of Mr. Smith, Plaintiff in the suit. They are,—Lady Camelford, the daughter of Mr. Wilkinfon;—Lord Camelford, whom she has married;—and their infant children.

Having said, that Lord Camelford is one of the interested parties, I conjure you to support his advocate, who feels the oppression of an extreme anxiety for him. We are united (I am proud of asserting it) by habits and principles of the most cordial friendship.

I said, that he was a party *interested*, and the term has been ridiculed as humiliating to him:—Let those who have played upon that word, play upon it again;—by *you* it will be understood and felt. He is *interested* by that high sense of honour which has actuated every part of his life, public or private, and which tramples under his foot another interest of a baser kind,—the interest of buying off obloquy,—of compromising insult. No terms can be cheap to *him* in a barter so despicable. He cannot shake hands with Mr. Smith; he cannot fear him, and, least of all, can he ever co-operate with him in acts which are injurious to the memory of a person who must ever be

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dear to *him*, as the affectionate parent of his wife, a personal friend of his own, and an honest man.

If *pecuniary interest* could have touched him, it would have checked his hand, when he *gave* to Mr. Smith a sum little inferior to his present claim,—*gave* it unsolicited, upon the event of his own marriage; a circumstance which *you*, Gentlemen, could never have known (for I would have scorned, as an advocate for *him*, to mention it), if the idle topics of censure upon him, as one of the rich who cannot be rich enough, had been spared by his adversary's Counsel.

If *pecuniary interest* could have touched him, what line of conduct was eligible and obvious? He would have left the sister of his wife as he found her, stript of all intercourse with her parents; he would have respected a father's *oath* never to see her face again.—*Was* it his conduct? He threw her into his way, and (in a manner) *compelled* his protection of her against the very husband for whom she had sacrificed her filial affection to him.

If *pecuniary interest* could have touched him, would *he* (of all men) have recommended the agreement which assigned the care of Mr. Smith's children to the hand most likely to pour benefits upon them? Look at the *consequence* of that arrangement! A little *month* had not passed before a Codicil added £9,000 to their portion, and made Lord Camelford the Executor. Who shall say what additional fortune they *might* have received, if their father had not alienated them from the very person to whose *care* he gave them under his hand, and gave them "*for their good*;"—the words are his own.

"But Mr. Wilkinson cancelled that Codicil."—It's true; but *when* did he cancel it? I answer;—when Lord Camelford was abroad, and *could* have no influence upon the act.

Why

Why it was cancelled, ask Mr. Smith; he *knows* the cause, for he alone gave birth to it; and he shall prove it, against his will, as an act of his own.

A later Codicil bestowed upon Lord Camelford a life-estate in his wife's fortune; but the condition is, that of taking from both of the parents £3,000 a year, which is to accumulate for the benefit of their children.

The fortune of Lady Camelford had been given to her by a Will, dated *three years before she was married*.

Idle topics these, and they beat the air upon either side of them; but who called them forth? who began them? and shall mine be the fault, who answer calumny with truth before a public audience? *You* will (I am sure) lay aside every thing *personal*, whether adverse or favourable, to either of the parties. But *can* I hear of a "*disinherited child*," and of an "*honourable marriage*," without stating the *fact*, that, by the child so disinherited, and her husband, or children, has been received a sum of £24,000 (at least) from the parent accused of *disinheriting*?—that so *honourable* a marriage was a *theft*—a marriage with *him*, of all others whom the parents (from their first knowledge of him) uniformly disapproved; who had not a guinea to settle upon his wife, and has made the father of that wife a peculiar object of his calumnies?

The general question is, "Whether Mr. Smith is entitled by "*law* to the arrear of annuity which he claims?" and that question depends upon two or three other points; which, attempting no rhetoric, I shall only endeavour to *explain*: Your

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feelings and good sense require little more of me than to be an accurate *historian*,—to lay before you the *materials* of your judgment.

First, I am to ask you, if, under all the circumstances, you interpret the entire act of the parties at the house of Lord Mansfield as forming *one agreement*, binding in all parts of it;—so as to make the “*care of the children*,” as well as the *separation of their parents*, a condition of the annual sum.

I thought it a point so clear of doubt, that I argued upon it, a few minutes ago, to the Court, as *proved*, and ingrafted upon it an application for a *nonsuit*; as this *ingenuous* Plaintiff, in *his* account of it, had omitted “*the care of the children*,” though part of the agreement, stipulated under his own hand, and had represented the annuity, as depending upon the separation from his wife: but, as I am told by the Court, that I am to address *you* upon the sense of the contract, I shall hope soon to obtain the sanction of *your* judgment, that *it is* the very sense which I have put upon it.

Compare *words* to *facts* which *precede* them and *accompany* them. I shall enter into no argument upon the *legal* import of this or that phrase; but I shall ask you, what the *whole transaction imports*? If an unprejudiced man can doubt of the *intention*, as I have stated it in my address to the Court, I shall despair of convincing any man that five is the half of ten;—and cruel, indeed, will be the injustice here, if the *form*, or any abstract *rule* of construing words, can baffle that of the parties, which their own *act* has proved.

Mr. Smith's wife complains to her father (with whom, to that moment, she had no intercourse after the marriage; and whom she had offended beyond expression, by so improvident a measure),

a measure), that even *he*, the very husband who had made her abandon her parents, *threatened her life*.—Lord Camelford has recourse to a good-natured fraud—he *obliges* Mr. Wilkinson to see her without prejudice to his oath—*obliges* him to interpose between her life and the menaces of her husband, which, by her account of them, endanger it. She proceeds to Lord Mansfield's house for the purpose of swearing the peace against Mr. Smith. Her information is put into form (you have heard it read); she offers to make it complete by her oath. Friends of Mr. Smith interpose, and it's admitted that *four* things were to be made subjects of a written *agreement*:

- (1.) Mr. Smith was to separate from his wife.
- (2.) He was no longer to have the care of his children; but Mr. Wilkinson was to have it; and *for their good*.
- (3.) Mr. Wilkinson was to *pay* for this advantage to his daughter and her children; or, in other words, he was to buy off their father's power of doing them an injury, and purchase to himself the power of doing them good, by a sum of £200 a year, settled upon *him*.
- (4.) He was to pay for it, by taking upon himself the debts of the wife, *during their separation*.

This admitted *intention* of the parties, and *their* agreement (whatever may be the *legal* import of the *written* contract) is put into a very awkward shape. Two papers are signed:—By *one*, Mr. Smith engages to give up "*the care of his children*," as well as to separate from his wife; and Mr. Wilkinson is described in the same paper, as *agreeing to pay the annuity*, as well as *the debts* of the wife *during the separation*. To this paper Mr. Smith put his hand. Mr. Wilkinson signs another, in which he stipulates to do the very thing (and in the same

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same words) which he had promised in the paper signed by Mr. Smith ; but he omits to repeat what Mr. Smith had promised.

Here lies the whole mystery and quibble of the argument. If, in the paper, signed by Mr. Wilkinson, it had been added, " He the said *John Smith* agreeing to separate from his wife, and " *agreeing to give up the care of his children for their goods*," no pretence of a doubt could have been made. But Mr. Smith having possession of the paper signed by Mr. Wilkinson, considers the positive engagement, by which *he* is bound under his own hand, as nothing, and states that of Mr. Wilkinson to import, that *whatever may become of the children*, Mr. Smith has only to "*separate from his wife*," but may bind Mr. Wilkinson to both parts of *his* covenant.

Yet the two papers having been exchanged between the parties at the same instant of time, what is the language of that arrangement ? what can it be, in fair and liberal construction, but this?—" Here's *my* paper" (says each of the contracting parties to the other) ; " I engage to do all that I promise to do under my " hand, upon condition that you will do what *you* promise under your own, in the paper which you at this moment give " to me."

Is the *care of the children* a nugatory part of this contract ? It's the most important of the *two conditions* (for such they are) upon which the annuity is given. The separation from her husband was open to the wife, if she could prove acts of cruelty ; and in that case *he* must have supported her.

The first achievement of Mr. Smith in a Court of law, is to disown his hand ;—so *romantic* his honour, so *liberal* his advocate. I applied for the delay of this cause, till we could prove his hand by the attesting witness to it ; and it was a *force* upon him by the Court (at the peril of this delay) to admit the execution of the

the paper, though, if it was *not* executed by him, he gave it as purporting to have been executed by him, and gave a paper of no effect in exchange for another upon which *his* remedy would be *sure*.

Driven out of this *generous* expedient, he takes advantage of the paper upon which he claims to recover, as having no reference to that which he gave in exchange for it. But what can we say of him, if I should lay before you his own sense of this transaction, under his own hand, *at another period*, and a sense of it in perfect unison with mine? What if, *Plowden*-like, he should argue upon it *there* for his own benefit, and refuse the argument *here* as it may be turned against him?

I'll give you his words: they are in one of many *judicious* Letters to a child then at school, and *scarce ten years old*:

"I should think, as your grandfather gave me £200 a year as long as my wife should be separate; *and that he was to have the care of my children*, now that he has stopt the £200, he means to give me up *the care of my children*, and order my wife home."

If that proposition is true, can it be less true, that, if the children should be taken from the care of Mr. Wilkinson, the annuity would be at an end?

But, independent of Mr. Smith (*kind and accommodating* as we find him), let us reason together upon principles of common sense. The *ridicule* of their supposition, who mutilate the equity of this contract, is almost of itself argument enough to overturn it. It's agreed, that if the terms of each paper had been inverted, and the signatures had been reciprocal, every part of both would have its weight; or, in other words, every thing to be *done* by either of the parties would be the condition of that which he was to *receive*.

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It's agreed, that if this compact had received the form of a bond for the annuity upon the two conditions, a failure in either of them would have destroyed the annuity itself.—Will any man living, who reads the two papers, and reads the evidence of the *whole* fact which accompanies them, entertain a doubt whether it was, or was not the *intention* of the parties that such an *effect* should spring from this present form of the contract (which their friends advised them to adopt), though it's less clear and accurate?

If it *was* the intention, where is *that spirit of honour* which is the peculiar feature of Mr. Smith (if his *friend* Mr. Erskine is not a partial and flattering painter of the man he loves), when he attempts to baffle it by *rules of law* applicable to the *words* and the *form*?

But can he succeed in this attempt?—" *As long as he shall separate,*" are the words of the paper signed by Mr. Wilkinson, and it's a paper which Mr. Smith prefers, because it omits to *repeat* his own condition relative to the children, described under his own hand in the paper which he does not like so well.

Is the *term* of the annuity, so marked, a *condition* of that annuity? or is it not?

If it *is*, look at the consequence of it—Here are two *counter-agreements*, or *counter-securities*, exchanged at the same instant of time, between A. and B. two contracting parties. In one of them, and that which had been written first, is contained what *both* parties engage to do. In the other, B. repeating *his* engagement, omits to repeat that of A. though distinctly expressed
in

in the paper first written, yet the very same words of B. in the second paper, are tortured into a different sense from that which they *must* bear in the first.

In the paper signed by Mr. Wilkinson, the *term* of the annuity is by force to be made a *condition* of it; though in the paper signed by Mr. Smith it *can* be no such thing; for *in that paper*, the *condition* of the annuity, and the whole of it, had been previously and accurately expressed. Mr. Smith, *in that paper*, engages for *two* things to be done by *him*; upon Mr. Wilkinson's agreement, that *he* will do a *third*, and a *fourth*, for a term, which is marked by the duration of a particular event. The converse proposition is, that Mr. Wilkinson agrees to do for the *term* so defined, the *two* things which *he* has promised; upon Mr. Smith's agreement that *he* will perform the *two* engagements which are stipulated by *him*.

If the *term* in the paper signed by Mr. Smith should be a *condition*, it would repeat *one* of the two conditions, by which he had, in that same paper, held himself bound, for no conceivable purpose, but that of disengaging him from *the other*, though he would not have inserted *both* in their natural place, if *both* had not been understood as binding him. The same words thus importing, in the two papers, a sense perfectly different,—the *term* in one of them, but in the other a *condition*; Mr. Smith will recover *one* day his annuity, because he has lived apart from his wife; but lose it *another* day (or lose a part of it), in damages, because he had violated a condition expressed under his own hand, by refusing the care of the children to Mr. Wilkinson; and so the changes might be rung for ever upon these two papers, looking at separate objects, and guarded by separate remedies; with a difference however not a little important between the benefit of one party and the

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benefit of the other in so wild a contract. For Mr. Smith can recover the *annuity itself* by performing *half* his engagement, that is, by separating from his wife. But Mr. Wilkinson, who pays the annuity, and the debts of his wife, in which two things *all* that *he* is to do is comprised, can have no redress against Mr. Smith as having violated *his own agreement* relative to the children, but in damages, which have no certain measure. Here the parties, then, are upon very unequal terms, and the disadvantage operates against him who stood at the time of the contract upon advantage-ground.

What reason can be assigned, by the wit of man, for dropping in one paper a positive engagement which is expressed in the other? And is it less the *real intention*, because expressed in *one* of the papers alone, that Mr. Smith should surrender the care of the children to Mr. Wilkinson?

But why is the *agreement of separation* as the covenant of Mr. Smith, inserted in one of the papers, but omitted in the other, unless both papers (exchanged at one moment) are to be held *one agreement*, binding in all parts of it alike,—every part essential to the whole?

I have argued thus upon the first branch of the alternative; in other words, upon the *term* of the annuity as the *condition* of the payment, and marked the effect of it.—

If, on the other hand, it's *not* the condition of the payment, we must endeavour to find what *is* the condition of that payment elsewhere, and look at the covenant on the part of Mr. Smith in return for that by Mr. Wilkinson, in which the annuity is made payable;—in short, we must look at Mr. Smith's own paper in his own hand.

If,

If, in the paper signed by Mr. Wilkinson, the separation of Mr. Smith from his wife is marked only as the *term* during which the annuity is to be received, the whole is intelligible, it's natural, and it speaks that which the parties meant. The annuity is granted upon two conditions; that of separating from the wife is one of them, and the surrender of Mr. Smith's children to Mr. Wilkinson's care, is another. But the term of the annuity is made co-extensive to the term of the separation *alone*: Why? because the separation was likely to continue longer than Mr. Wilkinson's care of the children, which of course would be at an end with Mr. Wilkinson's life, then a very old man; yet his death would have made the agreement void, unless the term had expressly reached the other event, that of a continued separation from the wife.

If the two papers are *one agreement*, and if the "*care with^d*" "*beld*" forfeits the annuity, in what sense is the word "*care*" to be read?

It's rather a more complex term than *separation*:—We must look at the subject,—at the situation of the parties,—at the cause of separating from the wife,—at the temper of the man.

If it was not thought necessary to guard the *children* as well as the *wife* against him, it was an act of extreme injustice to him (*suggested by his own friends*), to separate him from his children at all, or *in any degree*; and I can form to myself no conception of a just ground applicable to *any* part of the *care*, which is not applicable to the *rest*; or applicable to it in the narrowest construction of the word, which is not *as* applicable to the most unlimited extent of it.

But

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But what *is* the word, if no express conditions are imposed upon it? I should rather ask, what is it *not*?

Is it not *education* in all branches of it?

Is it not *personal controul*, of any and every kind?

Is it not the *disposal* of the children? or is it the *care* of *paying* for these parental offices in the hand of *such a parent*?

Ask Mr. Smith, and *he* shall be the interpreter of his own act. He admits, under his hand, that *he* understands *the right of disposal* to be the sense of the agreement, though he blames *his own act* for that humiliating surrender of his natural claim.

When I bring you to his conduct, I shall prove that one master-key will unlock every part of it. He admits *openly* the *two papers* to be *one agreement*. He admits *openly* the *care of the children* to be a *condition* of the annuity up to the moment that he violates that condition; but he counteracts and undermines it by *secret* influence over the children, attempting to make the care seem *refused* by *them*, not *resumed* by *him*.

When I talk of the *care*, and what the parties *understood* by it, I need scarce lay down one rule which has law and sense united in its favour (they are not upon every occasion so united): It must be implied, that whatever is the care, so understood, Mr. Wilkinfon is to *have it*, Mr. Smith is to *have it not*;—is neither to obstruct nor disturb it, nor break in upon it, nor act against the effect of it, by force or fraud; for if he can so interfere, he does *not leave his children to the care of Mr. Wilkinfon*.

Here you are to ask, “ what the parties *would have said*, if “ the conduct which Mr. Smith has in fact observed, had been “ stated in *supposition* to them when the papers were signed?”

Impediments to the *care* may be of a thousand various kinds : I will point out some of them ; and you will hereafter see the reason of my choice.

A violation of such an agreement by Mr. Smith may depend upon his good or bad conduct by the children in situations perfectly the same. The *time*, the *manner*, and *principle* of the act are to be weighed.

An example readily offers :—The father had clearly the right of a *natural* and *reasonable* intercourse with his children. Suppose them with him during the holidays, as in fact they often were ; and suppose him at one of these meetings to have threatened their lives, (I put the case in *supposition*, without affronting Mr. Smith ; for unless his wife must have been *perjured* by her oath, he was capable of such violence to *her*, and if to *her*, could his children be *sure* of better treatment ?) What, in such an event, must have been Mr. Wilkinson's conduct ? An intercourse reasonable *in itself*, having been so *abused*, must he not have checked it in future, or put even a total prohibition upon it, as the degree of any such violence may have been more or less ?

The same father would have obstructed and violated the care of his children, as administered by others (with his own consent), if he had corrupted their hearts,—if he had studiously alienated them from those to whom he had given the care of them,—if he had made them feel and act as if they were independent,—if he had formed secret cabals or conspiracies with them against those who fed and supported them,—if he had cajoled them into an undue partiality for *him*, irreconcilable to the care of them in other hands, if he had made an address to their passions at the expence of their duty,—if he had in terms denied the right of that care *privately* to *them*, receiving *openly* the covenanted price of

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of it,—if he had stated the agreement as violated, while he profited by one part of it,—if he had misinterpreted the sense of it in Letters to the children,—if he had set up their obedience to *him* against their obedience to the guardians appointed for them by himself,—if he had ever tempted them to run away;—but, above all, if he *took them* away from this care, without the consent of those to whom his own immediate hand had entrusted it.—By these acts, and by all of them together as parts of a system, or links of a chain, he would have *resumed* the care, and *forfeited* the sum due to him for the surrender of it.

If a secret act should poison the good faith of such an agreement, would the act, when *discovered*, be no ground of the forfeiture, *because it had been secret*? Enable either of the contracting parties to baffle his engagement with impunity if he can wear a mask at the time of the act, though he pulls it off, or drops it, the next minute, and you give a cheap receipt for turning an *equal contract* into a *gift by force* (that I may give it no *barber name*): For example, in a case like that before us, a wife may collude with her husband, and may admit him privately to a constant intercourse: Will it be no forfeiture, when discovered, because it was in the dark for a considerable time?—Put another case:—The masters, the tutors, or agents of any kind, in whose care the children are placed, may collude with such a father as Mr. Smith, and may cheat the good opinion reposed in them, by a feigned compliance with all the delicacies of their trust.

Let me now put the question to any one of you, Whether, if you had stood in Mr. Wilkinson's place; and if, in the moment of stipulation for the care of the children, such an interference with it as I have delineated in supposition, had been *expressly* reserved, you would have conceived *any care at all* surrendered?

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Let me ask you too, whether you would have listened patiently to the insult upon your understanding, conveyed in Mr. Smith's agreement so *explained*.

Having thus viewed *in theory* such injuries to that care of the children which the annuity brought, you are now to determine, *upon evidence*, whether the care so assigned was *in fact* left in Mr. Wilkinfon's hand by Mr. Smith according to his agreement, or was *in fact* resumed by him.

I am here, Gentlemen, to execute the most unwelcome part of my office, and I tremble under the weight of that necessity which Mr. Smith himself has laid upon me. It's to *him* that his children owe the disclosure, by me, of his injuries to *them*;—injuries beyond example in the unfeeling cruelty of them.

Before I go into the detail, I have two or three preliminary ideas, and facts, to intimate. First, I am to assure this Gentleman, that he will hear no reflections of *mine* upon him: that he shall draw his own living portrait with his own personal hand: that if reflection upon him *should* come, he will throw it upon himself by acts and words of his own.

But Lord Camelford has it much at heart, that I should apologize to every generous mind in this audience, for exposing even such a father to the public view.

By two ways he could have buried *this* weapon of defence. One of them was "*to pay the annuity-arrear.*"

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If

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If he had so acted, *he* would have been a party in the wrong done to Mr. Wilkinson's memory, co-operating at the same time with his adversary, against his own clear sense of justice and of honour to his departed friend.

Another expedient must however occur to you as obvious to either of the parties, if the fair thing was meant between themselves, and the manner of it was preferred which had the least indelicacy to others; I mean the expedient of terminating such a dispute in a less public form.

Upon Lord Camelford's conduct in that single view of it, I would agree to rest the vindication of his conduct in every part of it. Let his adversary join issue with him there, and lay aside every other branch of the cause, if he dares. I can venture to assert, that so ingenuous an *offer* was never made as by Lord Camelford, and that so clear an *engagement*, or so bound with all the ties of honour, was never broke as by Mr. Smith.

Addressing by force (and that force the act of Mr. Smith) a public audience, I wish to have it completely understood, that he would not have been told *here* by his own acts that he had broke *one* agreement with Mr. Wilkinson, if he had not also compelled us to declare in the same place that he has broke *another* with Lord Camelford.

The *offer* compromised nothing, surrendered nothing, but gave the adversary a wider field, and a more liberal ground, contracted by no rules, or at *his* option the legal and strict view of the subject, stipulating only for men of honour as the Judges upon either ground.

His offer to refer the cause, and so to refer it, was *accepted*: At least the name *J. Smith*, and signed by *him*, accepted it.

Lord Camelford named referees of three classes;—friends,—gentlemen who were strangers to both parties,—and lawyers in the same description. I am proud of the *names*.—Mr. Montague, Mr. Yorke, and Mr. Scott: To *name* them is to do them honour; and as to the person last mentioned, who would refuse him but Mr. Smith? To call him as bright an ornament as our profession ever had, is to describe a fiftieth part of *his* merit, who is an ornament of the human character.—The referees were at last appointed; Mr. Montague, as friend of Lord Camelford; and Mr. Hanway, as friend of Mr. Smith. Notice of trial was countermanded;—and I must remark here, upon a *characteristic* incident of an earlier day, when I applied for the delay of the cause till a witness could attend, and prove the execution of Mr. Smith's paper: It was mentioned by the counsel who followed me, that Mr. Smith had not *always* been so impatient, having himself countermanded notice of trial in a former term. Up started the Solicitor of Mr. Smith, and instructed his counsel to say that it was a countermand *at Lord Camelford's request*; though in truth it was the necessary consequence of the *agreement* between them, ratified by Mr. Smith's *consent*, that his action should not proceed.

When it was ripe (as far as principles of honour could ripen it) for arbitration, a difficulty arose; the Executor doubted whether he could sign the arbitration-bonds till the Court of Chancery should have indemnified him, or should have certified that it would be for the benefit of the infants, who had an interest behind that of Lord and Lady Camelford.

Ample notice of this difficulty was given to Mr. Smith, and he was apprized of the delay incidental to it;—yet he *consented*. An application to the Chancellor was made, and a *consent* on the part of Mr. Smith was *authorized by him* in the form of direc-

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tions to the counsel who should appear for him. The Order issued; objections were made by Mr. Smith; every one of them was adopted; his attendance was desired, and the Order framed as he chose it: but on a sudden he turned round upon Lord Camelford, and again threatened him with trial of the action. I protested in Court; and how do you think I was answered? "*It is not in the bond.*" Look at the Order. It "appears, "not that I CONSENTED, but that I DID NOT OPPOSE."

But what has been the fact (as it must be disclosed) of Mr. Smith's conduct by his children since he executed the agreement?

He took away Sydney, one of them, without the consent of those who had the care of him.

He took away John, another child, without their consent.

He attempted, before he took them away, to seduce them into an elopement as an act of their own, by Letters to them which had a natural tendency to that effect.

These Letters I should think sufficient, of themselves, to forfeit his annuity, from the time of writing them; or, if paid beyond that period, from the time of payment: but they are also material to explain upon what *principles* he resumed the care which he had sold, "*for their good,*" and for his own profit.

I shall begin with Sydney; and will take an occasion to explain why it is that I touch at all upon the seduction of the other child.

At present I insist, that when Sydney was taken away, the annuity was gone; and so Mr. Wilkinson has uniformly affirmed. From that period all payment has been withheld.

I have

I have said, that Mr. Smith's general plan was this: To *own* the agreement in *my* sense of it, but *undermine* the effect of it, except as to his own profit, which he never *chose* to *disclaim*.

I have said that he undermined it, by attempting to make his children co-operate with him at least, if not strike the first blow;—and I can prove it under his hand, by reading his Letters to them.

It's agreed, that Mrs. Smith had the care of her children with Mr. Wilkinfon's consent, and as representing *him*; nay, Mr. Smith has proved it himself; he had complete notice of it, and he never denied the fact, or opposed the arrangement. I lay no stress upon her *parental* character, and will treat her only as an *agent of Mr. Wilkinfon*.

“ But the Letters were secret, and Lord Camelford is ungenerous in taking advantage of them.”

Let them be read, and let the writer of them impute their *secrecy* as ground of blame to *us* who publish them;—let him reprove *our* treachery in *reading* them, if he can vindicate his own in *writing* them.

Secret they were in *his intention*; he declares it himself; let him state that, as the defence of them when the Letters have been read. *He* shall be counsel for the defendant here, and I will *improve* under *him*, because he enables me to carry the point against himself, by words and sentiments of his own, more *striking* infinitely than mine.

His agreement was in 1772, when the children were ten, seven, and three years old. In 1774, *two* years after he gave them up, he writes to the second of them, nine years old, at school,

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school, while he receives the annuity (a quarter in advance), and while the children are in the mother's care, under Mr. Wilkinson (a custody which he did not oppose).

He tells him, "That he is vexed at his childishness, and his not entering into his, and his father's situation."

"That she (his mother) treats him like a child, a little child."

"That he is not afraid of her, from any part of his conduct which has been wrong to her."

"That *he never attempted her life in thought, word, or deed.*"

He asks him, "Why he treats *her* as if she was his father, instead of an *overbearing arbitrary mother?*"

—"Why he did not say that he *could* not go from Bath *without his father's leave.*"

"They could not *tie him neck and heels.*"

"If any force was attempted, *he could run away.*"

"Has not he an affectionate father *to run to?*"

"He so mistook his wife's nature, as to *consent* to the letting her have so much power over the dear boys; but he thought *tenderness* would bring her to *her senses.*"

He asks him, "Why he did not *refuse* to write contrary to *his orders?*"

He tells him, "*That he must never, if he expects his blessing or God's, obey his mother, at the expence of his obedience to him.*"

He says, "That his late very terrible misfortune would never have happened, if his wife had not *deserted him*, and taken away his children from him."

He

He ends: "Oh my dear Sydney, what has *this woman* to answer for!"

Here ends the *first* of his Letters; and here let me ask,

Did he *leave the care of his children to Mr. Wilkinson* when he thus wrote? when he told the boy, that for *God's blessing and his own*, the obedience must be to *him*, in prejudice to the orders of his other parent, though in *her* the care of them was placed by Mr. Wilkinson, with *his* consent? when he blackened that mother to her own children, as imperious to *them*, base and cruel to *him*; when he described her as ready to be perjured; as mad; and as having deceived him with false hopes of tenderness to her own children; when he prompted him to disobedience of more kinds than one; when he recommended elopement, engaging to *receive* the child if he should run away?

This in 1774.—In the next year we shall find him pursuing his blow, and, like another Timotheus, trying by turns the various topics most likely to act upon the judgment or the passions of his *youthful* reader.

He finds "the mother is *as good-humoured as ever*."

He tells him, "that he never must call the place which his mother lives in, *his home*, though it were a palace—that *his* (the boy's) home, and *her* home is wherever *he* (the father) lives; that school is more his home, because *he* approves of it; that his children are not at the other place (their mother's house) with *his approbation*; that he *only consented* to it, to try if he (the child) will get any money hereafter by his *humouring* the old grandfather;"—sends "his LOVE (in ridicule) to his *untoward* mamma."

Here this *ingenuous* father distinguishes *consent* from *approbation*; insinuating, that for the *pecuniary* good of his children, he had

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had *cheated* the party with whom he had agreed, by *affecting* an approbation which he could not *feel*.

"I wrote you word (says he) that Lord Dartmouth and Lord Mansfield say, Mr. Wilkinson *has made all agreements void*."

If it was true, he should have *acted* upon it, and should not have made secret poison of it, while, upon the open concession of an agreement in force, he received the wages of it.

"Your mother's unreasonable, *abominable treatment of me* has at last *wore me out*, and brought things to a conclusion; my sufferings are now near over; I shall very soon have my dear boys, *never*, till God *please, to part with them any more*; as long as I live I will not *sell* my dear boys, and I am sure they will not sell me; pray to God to *convict, convince, and forgive your mother's behaviour to us all*."

"This morning my goods were all seized for house-rent, I have paid for my lodgings in advance: *so this is another thing your mother has exposed me to*."

The very mother whom he had impoverished, and whose life he had threatened, is here to be made one cause of the distress in which he is involved during her separation from him with his own consent.

—"Lord Dartmouth has told me, that Mr. Wilkinson *has broke all agreements, and I may do what I please*."

"So I shall touch the old Gentleman up with a little law, and now make my story known to the whole world, by which means the *Wilkinson click* will come at it truly."

"Don't let this Letter out of your hands." Why not, if the contents were honourable, and the agreement was at an end?

—"I beg

——“ I beg you to observe, that your being obliged to write
 “ to me, may be a very good excuse for omitting to write oc-
 “ casionally to your mother ; but never omit to write to me,
 “ because you are to write, or have been writing to her. She
 “ has forfeited all that kind of attention from me ; her beha-
 “ viour has been too bad to me, and *has stamped a stain upon*
 “ *her children* : that if she gets her father’s money by her plan,
 “ *it will never make them amends, because it never can wipe*
 “ *it off.*”

Here the generous *pride* of the children is called in, to co-
 operate with affection to him, in resisting and resenting the
 mother’s *avarice*, which has *degraded them*.

——“ Lords Dartmouth and Mansfield say, Mr. Wilkinfon
 “ *has made all agreements void.*”—Why urge these authorities
 to them ? and why in secret ?—That he may shake the duty
 of his children to that care which he had planted over them ;
 and, at the same time, receive the annuity as if he made no at-
 tempt injurious to the condition of it.

——“ This *mad business* has gone on long enough ;—it is
 “ *my turn now to show that I am in my senses.*”

——“ Your mother *has made your father stop my income* ;”
 an assertion without proof.

——“ Don’t tell your mother that I correspond with Mr. ——,
 “ for his wife had very near overset his affairs ; but he got no-
 “ tice of it, and run away from her, *as I would have done, if*
 “ *it had not been for Lady S——.*”

Here he insinuates, that his wife’s misconduct would have
 been a just ground for his elopement from her, *as having almost*
overset his affairs.

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In the next year, 1776, he is active in the pursuit of this clandestine attempt upon the duty of his children.

——“ I told you, never to leave Bath without letting me know time enough before where to stop your going to, or chuse to have you with myself:—all this is coming to an end very fast, for *it has been going on all wrong for four years*, and is now become quite *abominable*. I am not angry with you, but I do beg you will feel yourself a *little more responsible to me*, or we shall not remain friends.

“ I can only tell you what your duty is; I am not near enough to see you execute it.”

In the year 1777, the very year in which he kidnapped Sydney out of his mother's house, and carried him to sea, we find him writing in the same characters of seduction; he commends a Letter which the eldest brother had written, and says, that “ he supposes the mother will sink it, as she sunk his Letters when she deserted him.” This Letter of Charles gave particular umbrage to the mother as well as to Mr. Wilkinson.

In April, *the very month preceding the elopement*, he writes again, *without a hint of this naval destination*.

He says, “ the mother and the aunt have so treated Charles, that his edge is much taken off:—that she (the mother) now begins to reap the *fruit of her labour*. Time will bring her plan to *perfection*, and she will be in a TERRIBLE WAY.”

——“ *I give you my own leave, to be informed, to understand, and to act as your conscience directs you.*”

——“ I have no notion of such *arbitrary dispositions*.” Having given him these ideas of his own independence, he proceeds

ceeds to interest him against the mother by *his affection* for his brother Charles.

——“ I fear your mother *has hurt your brother* with your grandfather; this is all *for the GOOD of the children.*”

Then he alarms him for himself: ——“ It will be *your* turn the next.”

Then he pleads *religion* as an argument for his *hatred* of his mother (not having a correct memory of the WHOLE of the fifth commandment). ——“ Her plans will all fail, because they are “contrary to *God’s decree.*”

Then he returns to the two brothers: ——“ Your brother sees he is to be in the wrong; he says *her* conduct distresses him much.”

Here I part with his Letters to Sydney, and carry you to their natural effect, the elopement of that youth from his mother, in which his father co-operates with him: —But if no such elopement had ever taken place, the Letters themselves are *secret forfeitures* of the annuity, because they are poison to the care which that annuity purchased.

While he writes these Letters, he receives the annuity; sometimes *delayed* when it was conceived that he had acted ill by the children, but never beyond the *legal day*; for you must recollect that he had a quarter paid him in advance.

Couple these Letters to the act of taking Sydney away; — they are parts of a regular system, and must be seen together;

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though either the Letters alone would forfeit, or the elopement alone as the act of Mr. Smith in obtaining and suborning it.

From the date of that elopement the care of this child was taken by Mr. Smith, in all respects, upon himself. From that same period the annuity has been withheld, and the reason openly assigned—"that it was *forfeited*."

He took him away from the mother, without her consent, and without the consent of Mr. Wilkinson. If Mr. Wilkinson's consent was in fact given, let them prove it; the burden of that proof is upon *them*. But interrogate *the act itself*, and the manner of it.

Would he have *kidnapped* the child, if he could have produced or proved Wilkinson's consent that he should be taken away?

Read, in the next place, the last Letter which you have heard:—Is there a hint in it of any design to make a sailor of him, and carry him away for that purpose, with his grandfather's consent? yet this was only a month before the actual elopement.

But it may be said, "You waved the forfeiture, by continuing "John under your care." I answer, that humanity continued him under this care, till his father (in less than two years) took *him* away too; an act, in which he was unopposed.

That Mr. Wilkinson refused the annuity in terms the most explicit, soon after it was first withheld, will be in proof; and that he sent counsel's opinion to his adversary.

But

But as to John, if Sydney had the consent of Mr. Wilkinson to his elopement from his own mother; if his naval destination, because proper in itself, is to vindicate the conduct of Mr. Smith in forming and acting upon it without Mr. Wilkinson's consent or approbation; or if the forfeiture had been waved by the continuance of John, how is the act of taking *him* away to be justified?

Here, too, you will find the same art pursued. He is nine years old; and that which the father had made Sydney begin with him, is concluded by himself. I should repeat, not the same words, but the same principle and spirit of conduct, in words perhaps *too gross to be read*, if I should make any extracts of the Letters to John, a part of my address to you, though I shall read them in evidence.—They are full of the most envenomed abuse upon Mr. Wilkinson by name.

You will not wonder at the effect of such attempts upon both of his children.

By the way, this conduct of Mr. Smith explains and justifies the act of *his own friends*, when they agreed, at Lord Mansfield's house, to a complete surrender of his children into other hands.

Here I cannot help touching upon another part of Mr. Smith's *address*, who, for some years after the annuity was first withheld, and the reason assigned, "*shook the dart, but delayed to strike*;" threatened an action, but never brought one. He altered his mind, and grew firm in proportion as Mr. Wilkinson grew weak, till it was necessary to have a Commission of Lunacy against him; and at this *well-chosen* period the action was brought. He refused

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refused *then* to admit the execution of the paper signed by himself; resisted the appointment of Lord Camelford as the Committee, and even the delay of trial, till the agreement signed by himself could be extracted with authority from the papers of the lunatic.

You (Gentlemen) are to say, if, under circumstances like these in the conduct of Mr. Smith, his annuity can be recovered.

I should consider it as forfeited when John was taken away, if this had been the sole act of the kind; but it was completely forfeited by Sydney's elopement.

Exclude either elopement, and the Letters are grounds of the forfeiture.

Unite the Letters and the effect of them together;—they form a general system destructive to that care which the agreement bound him to encourage, or abandon the wages of it.

Lord Camelford wishes for no better judges than I have addressed; and he is happy to lay before *them*, all the motives of his conduct in open day. If his *judgment* has been erroneous, and you can acquit *the integrity of his heart*, he will be satisfied. If any honest man living can doubt the real meaning of the parties to have been, that Mr. Smith should not in any degree assume the care of the children, or counteract the effect of it in the hand of others, Lord Camelford must for ever despair of any ideas which may strike him in future as obvious to the common
 4 sense

sense of mankind. If the care is not, *in point of law*, an essential part of that which the annuity purchased, or if *this* part of the agreement, so understood, has been performed by Mr. Smith, in the opinion of so enlightened a Court, he will endeavour to form a new train of opinions and feelings applicable to *legal justice*, and legal principles of good faith in a contract.

As to all the calumnies *from a certain quarter*, which he has read and heard, or may continue to read and hear, he will for ever say to them:

“ Rail on, when my revenge shall be,
“ To speak *the very truth* of thee.”



Er. J. M.
10/10/06

